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9 CHURCH OF SCIENTOLOGY INTERNATIONAL

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MAR 26 1992

HUB LAW OFFICES

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 FOR THE COUNTY OF MARIN

12) Case No. 152 229
CHURCH OF SCIENTOLOGY OF)
13 INTERNATIONAL, a California not-) APPLICATION FOR ORDER TO
for-profit religious corporation;) SHOW CAUSE WHY GERALD
14) ARMSTRONG AND FORD GREENE
15) SHOULD NOT BE HELD IN
Plaintiff,) CONTEMPT OF COURT
16) [C.C.P. § 1209(a)(5)]
vs.)
17) DATE: March __, 1992
18) TIME: To be determined
GERALD ARMSTRONG and DOES 1)
19 through 25, inclusive,) No trial date
20)
21)
Defendants.)

22
23 Plaintiff Church of Scientology International ("the Church")
24 applies ex parte for this Court to issue an order directing
25 defendant Gerald Armstrong ("Armstrong") and his counsel, Ford
26 Greene ("Greene"), to show cause why they should not be held in
27 contempt of this Court, pursuant to section 1209 (a)(5) of the
28 California Code of Civil Procedure.

1 This application is made on the grounds that:

2 ♦ Armstrong acted as an expert witness in Hunziker v.
3 Applied Materials, No. 692629 S.C.S.C., testifying as an expert
4 witness and producing documents on March 13, 1992. Armstrong
5 stated he was testifying "voluntarily" and also that he had been
6 subpoenaed by John Elstead, the attorney who had designated him
7 as an expert. The subpoena (which Armstrong refused to produce)
8 was given to Armstrong by Elstead when he arrived for the
9 deposition. Armstrong provided documents to Elstead voluntarily
10 without any subpoena, telling Elstead at the time of delivery
11 that a TRO had been issued.

12 ♦ Within moments of this Court's granting of a 45-day
13 extension of its Temporary Restraining Order, Armstrong and
14 Greene committed new violations of that Agreement and the TRO in
15 the course of media interviews just outside the door to the
16 courtroom in which the TRO had issued; Armstrong and Greene had
17 invited the media to the hearing through telephone calls and a
18 press release.

19 ♦ Armstrong and Greene, as Armstrong's agent, granted the
20 media additional interviews, from Greene's law offices, which
21 further violated both the Agreement and the TRO issued by this
22 Court.

23 ♦ The press release itself violates the TRO in several
24 respects by disclosing Armstrong's experiences with the Church of
25 Scientology and L. Ron Hubbard at the time of the Settlement
26 Agreement.

27 ♦ Armstrong's breaches in the deposition, and Armstrong's
28 and Greene's breaches in the press release and media interviews

1 were calculated, deliberate and willful. They represent a
2 defiance not only of his unambiguous contractual commitments, but
3 also of the direct and specific injunction of this Court.

4 Based upon the accompanying Declarations of Laurie J.
5 Bartilson and Andrew H. Wilson, and the exhibits submitted with
6 those declarations, the Church now applies for an order directing
7 Armstrong and Greene, and each of them, to appear and to show
8 cause why: (i) they should not be held in contempt of this Court
9 and sanctioned for such contempt, under the provisions of Code of
10 Civil Procedure Sections 1209 et seq.; and (ii) they should not
11 be required to pay the Church's attorneys' fees for these
12 proceedings pursuant to Code of Civil Procedure Section 128.5.

13 This Application is based upon this Application itself; the
14 concurrently filed Declarations of Laurie J. Bartilson and Andrew
15 H. Wilson; the exhibits submitted with those declarations; the
16 records on file in this case; and such further evidence and
17 argument as may be properly presented at the hearing of this
18 Application.

19 Dated: March 26, 1992

Respectfully submitted:
WILSON, RYAN & CAMPILONGO

21
22 By: 
Andrew H. Wilson

23 Laurie J. Bartilson
24 BOWLES & MOXON
25 Attorneys for Plaintiff
26 CHURCH OF SCIENTOLOGY
27 INTERNATIONAL
28

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March 26, 1992

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HUB LAW OFFICES

The Honorable Michael B. Dufficy
Marin County Superior Court
Hall of Justice
Civil Center Drive
San Rafael, California 94901

Re: Church of Scientology v. Armstrong;
Our File No. SCI02-003

Dear Judge Dufficy:

I enclose the following in connection with the Application of Plaintiff Church of Scientology International for an Order to Show Cause re Contempt:

1. APPLICATION FOR ORDER TO SHOW CAUSE RE CONTEMPT;
2. DECLARATION OF ANDREW H. WILSON;
3. DECLARATION OF LAURIE J. BARTILSON;
4. (PROPOSED) ORDER TO SHOW CAUSE RE CONTEMPT.

Although the customary procedure to initiate contempt proceedings is to seek an order to show cause on an ex parte basis, given the Court's busy schedule and the number of ex parte applications previously submitted in this matter, we have decided to simply transmit the referenced application and supporting declarations to you, with copies to opposing counsel.

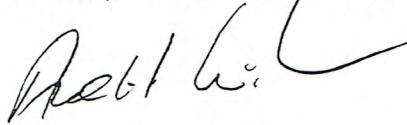
We suggest that Defendant Armstrong be given a reasonable period of time, not to exceed five (5) days to submit any counter-declarations he wishes to submit and that the Court then decide on the papers so submitted whether the Order To Show Cause should issue.

Of course, should the Court wish to hear oral argument, we would be happy to appear at the Court's convenience.

We regret having to take up the Court's time with this Application. However, the number and nature of the violations of the Temporary Restraining Order committed by Armstrong compel us to do so. The authority of the Court to consider and rule on this Application emanates from Paragraph 1(c) of this Court's order of March 24, 1992 which gives the Court continuing jurisdiction to enforce the Temporary Restraining Order, and upon this Court's inherent power to supervise and compel performance of its own orders.

Very truly yours,

WILSON, RYAN & CAMPILONGO



Andrew H. Wilson

AHW-0315:pan
Enclosures

cc: Ford Greene (w/enclosures - via hand delivery)
Laurie J. Bartilson (w/enclosures - via regular mail)
Graham Berry (w/enclosures - via regular mail)

FORD GREENE
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March 27, 1992

HONORABLE MICHAEL B. DUFFICY
Department 4
Superior Court of California
County of Marin
Hall of Justice, Civic Center
San Rafael, California 94903

By Hand Delivery

RE: *Scientology v. Armstrong*
Marin County Superior Court
Case No. 152229

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HUB LAW OFFICES

Dear Honorable Judge Dufficy:

Late yesterday afternoon my office was served with a copy of Scientology's Order to Show Cause re Contempt and supporting papers. The purpose of this letter is to respond to this unnoticed, ex parte application.

Our position is that the court does not have jurisdiction to take any action because once the Order of Transfer is filed, the Court loses jurisdiction to take any act except dismiss the case in the event that the transfer fees are not paid. ^{1/} This principle is set forth as follows:

¹ I will point out that Scientology bases the proposition that the Court has jurisdiction on Paragraph 1 (c) of your Order filed March 24, 1992. This provision was the consequence of a discussion between Mr. Wilson and me on March 23 regarding the fact that you had not ruled on the portion of the transfer motion that pertained to attorney's fee and costs. At that time Mr. Wilson made no comment that he and his client had considered bringing any contempt citation. My agreement with him pertained to fees and costs, only. It did not include within its scope any stipulation that the Court was to maintain jurisdiction for all purposes. Thus, Mr. Wilson's agreement that the Court could rule on the motion for fees and costs tricked me into an agreement that he intended, at the time, to use as a means of bringing a contempt application that otherwise he could not do in this Court.

HONORABLE MICHAEL B. DUFFICY
March 27, 1992
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"Appellants were required to deposit with the clerk the costs and fees for the transfer before such transfer should be made. Section 399. Although such deposit was not made the order of transfer had divested the Los Angeles Superior court of jurisdiction to take any other step in the action except one, namely, it was required to dismiss the action after one year had elapsed within which the costs and fees for making up the transcript 'have not been so paid.' Section 581b."

London v. Morrison (1950) 222 P.2d 941, 99 Cal.App.2d 876; See also Abraham v. King 51 C.A. 703.

However, should the Court determine that it does have jurisdiction to entertain Scientology's application, I direct the Court's attention to the following misrepresentations of the record and of fact.

Contrary to Ms. Bartilson's sworn statement that "Both Armstrong and his attorney, Ford Greene, were present in the courtroom at the March 3, 1992 hearing" Bartilson Declaration at 2:11-12, your recollection and the record belies this false statement. Gerald Armstrong was not present when this case first came before you on March 3.

Although Mr. Wilson claims "As soon as [he] had received a signed copy of the TRO from the Court, [he] served the TRO on Mr. Greene's office by mail." Wilson Declaration at 3:2-3. As I stated at the end of the March 20 hearing, I had never been served with any copy of the first TRO. Indeed, despite the fact that I stated as much on the record, and Mr. Wilson stated on the record that he would "mail another," I still was never served with any copy of the initial TRO until I saw the same attached as an exhibit to Scientology's contempt papers.

If the Court decides that it still does have jurisdiction over this case, and further decides that Scientology's showing is adequate to justify the issuance of an OSC re Contempt we are prepared to vigorously litigate this spurious attack on Mr. Armstrong and me. Your Order does not enjoin either Armstrong or myself from speaking to the press and alerting the Country to the fact of Scientology's efforts to obstruct justice and suppress evidence by getting you to enforce this illegal agreement. The fact that Scientology is taking the position that such is within the scope of your Order is illustrative of its bad faith inasmuch as it is attempting to stretch the Order far beyond any maintenance of what the Court perceived, we believe mistakenly,

HONORABLE MICHAEL B. DUFFICY
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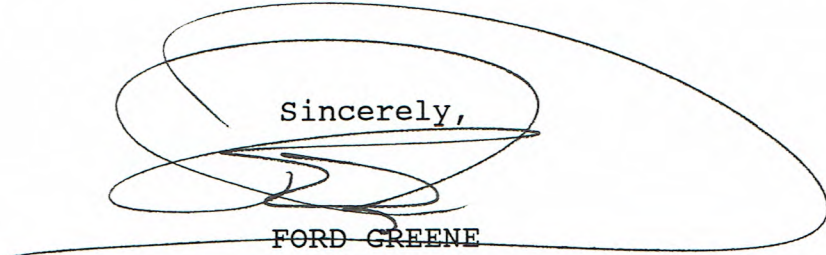
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to be the status quo.^{2/} The status quo is not that Scientology can talk to reporters in the hallway after the March 20 hearing, but if Armstrong says anything, he is violating a court order. That is, however, what you are being asked to do.

Thus, while Armstrong is required to guess at the meaning of the Court's overly broad and constitutionally vague TRO, what is clearly beyond its scope is any prohibition of Armstrong discussing the attacks upon him by Scientology after December 6, 1986, the date of the settlement agreement. The fact that Scientology is trying to get you to countenance its claim that discussing your TRO with members of the press is a violation of your TRO is, I respectfully submit, ridiculous, and an obscene attempt to increase the scope of your prior restraint. Furthermore, it indicates that Scientology will stop at nothing to prevent others from exercising the same rights that it demands for itself.

In the event that any OSC re Contempt issues, our request is to be allowed a full 15 days notice in order to prepare therefore.

Sincerely,



FORD GREENE

:acg

cc: Gerald Armstrong
Graham E. Berry, Esq.
Andrew H. Wilson, Esq.
Laurie J. Bartilson, Esq.

² For 24 months before your Order, Armstrong had expressed his right to Free Speech regarding pre-settlement material and Scientology did nothing about it.